DOCUMENT RESUME

ED 414 935 IR 056 793

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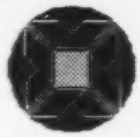
TITLE	Mellon Conference: Panel on "Licensing, Copyright and Fair Use." The HYPATIA Project (toward an ASCAP for Academics).
PUB DATE	1997-04-00
NOTE	8p.; Paper presented at the Conference on Scholarly Communication and Technology (Atlanta, GA, April 24-25, 1997), see IR 056 774.
AVAILABLE FROM	Association of Research Libraries (ARL) Web site: http://www.arl.org/scomm/scat/
PUB TYPE	Reports - Descriptive (141) -- Speeches/Meeting Papers (150)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Authors; Electronic Libraries; *Electronic Publishing; Electronic Text; *Faculty Publishing; Higher Education; Information Dissemination; Information Services; *Online Systems; Programming Languages; Reference Services; Researchers
IDENTIFIERS	*Digital Data; Scholarly Writing

ABSTRACT

The HYPATIA Project envisions the creation of a digital depository and licensing and tracking service for unpublished "academic" works, including working papers, other works-in-progress, lectures, and other writings that are not normally published in formal academic journals. Any academic who wishes to deposit a work will be welcome to do so; there will be no screening or peer review. Deposited works should be sent in HTML (HyperText Markup Language) format and upon depositing, the author will supply information necessary to cataloging the work. Every work deposited in HYPATIA will automatically receive an identifying ISBN-type number. The author, upon submission of the work, may demand that it self-delete from the depository by a date selected, or at any time. With each deposit, an author who wishes to impose terms and limitations of the work may select from a menu of choices. As a starting point, access will be limited to university-affiliated (or research institute-affiliated) users; a second phase of the project would extend access to independent scholars who do not have institutional affiliations. When registering, the user will encounter a series of screens outlining the general conditions on using HYPATIA. The depository will include an electronic catalog searchable by key word or by Boolean logic; the catalog will also be organized in a scroll-through format employing LC (Library of Congress) subject headings. The user will click on the catalog or type in the HYPATIA number to receive the work. The HYPATIA project does not now contemplate attempting to prevent users from making or circulating further copies of works obtained from the depository. Registered authors will have electronic "prestige" reports that they may interrogate any time. If the author has requested payment for access or copying, the registered user will need a debit account to access the work. It will be necessary to seek a grant to support the initial setup of and publicity for the system. The maintenance and helpline costs should be covered by a modest subscription from participating institutions, in exchange for the service of receiving and delivering works into/from the depository. (AEF)

ED 414 935

Scholarly Communication and Technology



Conference Organized by The Andrew W. Mellon Foundation

at Emory University
April 24-25, 1997

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Session #6 Copyright and Fair Use

Mellon Conference: Panel on "Licensing, Copyright and Fair Use"
The HYPATIA Project (toward an ASCAP for Academics)

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[6/13/97]

The HYPATIA[1] Project (toward an ASCAP for Academics)

This project envisions the creation of a digital depository and licensing and tracking service for unpublished "academic" works, including working papers, other works-in-progress, lectures, and other writings that are not normally published in formal academic journals. A centralized digital clearinghouse for this material confers a number of benefits on the academic authors and on users, particularly users of university libraries, including students, professors, and other researchers.

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First, a centralized depository offers a more systematic and convenient means to discover the unpublished literature than wandering around individual professors' or departments' Web pages. The depository's detailed and dynamic catalogue of its works, identifying new and revised submisions, will significantly enhance the accessibility of this material.

Second, academic authors may not always have a significant financial stake in the electronic exploitation of their works (whether the works are unpublished or published; in the latter instance, many academics may have assigned all rights to publishers -- sometimes inadvertently). But academics do have a very significant glory interest. A depository that undertakes what one might call "prestige accounting" for the authors, adds an important feature, and may serve as an incentive to participation.

What is "prestige accounting"? It is the tracking of use in a way that would permit authors to interrogate the depository to learn if and how their works are being used, for example on reserve or in coursepacks at identified universities, for identified courses. Currently, academic authors generally do not know, apart from general sales figures (if they receive any), what has been the dissemination of their works. With some prodding of publishers, one might find out which bookstores placed orders for the book, and thus infer which schools were using the work. However, this kind of information is not generally available (or, at any rate, disseminated) for photocopied course packs, even when rights are cleared.

Third, and especially important to the digital environment, a service of this kind would add considerable value if it could ensure that the digital version made available is authentic. Many works may be travelling on the Web, but the user may not (or should not) be confident that the document downloaded is completely consistent with the work as created. This is particularly significant when many different versions (e.g., prior drafts) are accessible at multiple Internet sites (not all of them with the author's permission).

I. Defining the *HYPATIA Universe*

A. What kinds of works will the HYPATIA depository include?

At least as an initial matter, the depository will be confined to unpublished works such as drafts, lectures, occasional pieces, conference proceedings, maseters theses, and, perhaps, doctoral dissertations. This definition should help avoid possible conflict with publishers (or those that are the copyright holders of works written by academics), who are or will be undertaking their own licensing programs. Moreover, the universe of "unpublished" works may grow as that of formal academic publications shrinks.

B. Whose works will be included in the HYPATIA depository?

Any academic [term to be defined; e.g., anyone with an institutional IP address] who wishes to deposit a work will be welcome to do so. There will be no screening or peer review.

Participating authors will register with the HYPATIA depository and will receive a password (registration information will also be relevant to terms and conditions, to authenticity; the password will tie into use reporting, see IIC; IVA; VB, *infra*).

II. Deposit

A. Entry of works

Deposits must be made by or under the authority of the author (if living) or her successor in title (if dead); the depository will not accept submissions from unauthorized third parties.

Deposited works should be sent in html format.[12]

Upon depositing, the author will supply information necessary to cataloguing the work, including her name and the title of the work, and will categorize the work for the HYPATIA catalogue by selecting from LC classifications and subclassifications supplied on menu screens (See also IIIC, *infra*.)

Every work deposited in HYPATIA will automatically receive an identifying ISBN-type number ("HYPATIA number"). The number will be communicated to each author upon deposit, as well as maintained in the catalogue.

B. Exit of Works

The author, upon submitting the work, may demand that it self-delete from the depository by a date selected. Any document so designated should bear a legend indicating when it will no longer be included in the depository.

The author may also demand deletion from the depository at any time. The catalogue (see IIIC, *infra*) will indicate when a work has been deleted as well as if it has been replaced by an updated version. A "morgue catalogue" will be established to keep a record of these deletions.

C. Terms and Conditions

With each deposit, a participating author who wishes to impose terms and conditions on use of the work may select from a menu of choices. These will include:

What kind of access to permit (e.g., browsing only)

What purpose (e.g., personal research but not library reserve or course packs)

Whether or not to charge for:
- Access
- Storage
- Further reproductions

[Additional terms and conditions to be provided]

III. Access

A. What Users May Access the HYPATIA Depository?

As a starting point, access will be limited to university-affiliated (or research institute-affiliated) users. These users will make their first contact with HYPATIA from their institutional host, in order to establish a user ID number from which they may subsequently gain access from both institutional and non institutional hosts (i.e. work or home).

When registering, the user will indicate her user category (e.g., Professor, post-doctoral, graduate, undergraduate) and disciplines (research and teaching subject matter areas); this information will be relevant to the depository's catalogue and tracking functions (see IIIC, VA, *infra*).

A second phase of the project would extend access to independent scholars who do not have institutional affiliations. At a later date, access to the depository might be expanded to the general public.

B. Conditions on Use

When registering, the user will encounter a series of screens setting forth the general conditions on using HYPATIA. These include agreement to abide by the terms and conditions (if any) each author has imposed on the deposited works. (E.g., the author permits browsing and personal copying, but not futher copying or distribution.) The user will also agree that in the event of a dispute between the user and HYPATIA, or between the user and a HYPATIA author, any judicial proceding will be before the U.S. District Court for the Southern District of New York (or, if that court lacks subject matter jurisdiction, before the New York State Supreme Court), and will be governed by U.S. copyright law and New York law.[13]

C. How Will Users Know What Are HYPATIA's holdings?

The depository will include an electronic catalogue searchable by key word or by Boolean logic. The catalogue will also be organized in a scroll-through format employing LC subject headings. The catalogue will be dynamic, so as to reflect new submissions, or revisions of material (and will also indicate when an author has deleted material from the depository).

The catalogue will be dynamic in another way. Along the lines of "SmartCLIP" and similar products, it will regularly e-mail registered users with information about new submissions in the subject matter categories the registrant has requested.

D. How would users access material from the HYPATIA depository?

After finding the requested work's HYPATIA number in the general online catalogue, or in the e-mailed updates, the registered user will click on the catalogue or type in the HYPATIA number to receive the work.

It is also possible to envision links to specific works in the depository from online course syllabi or other online reading lists.

In addition to the general conditions screens encountered on first registration, the terms and conditions (if any) pertinent to each work communicated will appear on the initial screen prefacing each work. In order to access the rest of the document, the user will be obliged to click on her consent to those terms and conditions.

IV. Authenticity

A. Delivery from the HYPATIA depository

Documents in the depository will be authentic when submitted by the author. The depository will add digital signatures or other marking material to identify the author, the work, and its date of submission.

B. Subsequent generations of documents originally obtained from the depository

The HYPATIA project does not now contemplate attempting to prevent users from making or circulating further copies of works obtained from the depository. But it is important to make it possible for anyone who obtains a document of uncertain provenance to compare it with the authentic version in order to ensure that no alterations have occurred. Thus, if a registered user has obtained a copy from a source other than HYPATIA, the user should verify that copy against the version in the depository.

V. Tracking

A. Identification of Uses

Registered users will respond to a menu screen indicating the purpose of their access: e.g., library reserve; coursepack; personal research.

B. Reporting

Registered authors will have electronic "prestige" reports that they may interrogate anytime to learn:

the number of "hits" each deposited work has received

the source of the hit (institution, department, user category -- names of users will not be divulged)

The nature of the use (library reserve; coursepack; research)

C. Billing

If the author has requested payment for access or copying, the registered user will

need a debit account to access the work; the debit would be credited to the author's account. These operations may be implemented through links to a participating bank.

VI. Other Potential Applications of HYPATIA

As currently conceived, HYPATIA's universe is unpublished academic works. But once all its features have been put into place, HYPATIA could either expand its holdings, or work in tandem with copyright owners of published works to supplement whatever rights clearance system the publisher has devised. Similarly, where authors have not assigned their copyrights, or have at least retained electronic rights, HYPATIA could work together with collective licensing agencies, such as the Authors' Registry, to supplement their rights clearance and reporting mechanisms.

VII. Costs of Implementation and Maintenance

A. Initial Setup

The primary initial costs will be in acquiring hardware to accommodate the depository, and in creating or adapting the software for the various components of the system: author registration; deposit; cataloguing; user registration; use tracking and reporting; billing. It will also be important to publicize HYPATIA to potential participating institutions and authors and users; some portion of the initial budget should be allocated to this.

B. Maintenance

Because most of the information in HYPATIA is author- or user-generated, the maintenance costs should be largely limited to general system maintenance and gradual expansion of disk storage. It may be desirable to provide for part-time "help line" assistance.

C. Paying for HYPATIA

It will be necessary to seek a grant to support the initial setup of and publicity for the system. The maintenance and helpline costs should be covered by a modest subscription from participating institutions, in exchange for the service of receiving and delivering works into/from the depository.

If the payment feature becomes a significant aspect of HYPATIA, a portion of the access or copying charges could go to defray maintenance expenses.

This project was developed by Jane C. Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law, Columbia University School of Law, in consulation with James Hoover, Professor of Law and Associate Dean for Library and Computer Services, Columbia University School of Law; Carol Mandel, Deputy University Librarian, Columbia University; David

Millman, Manager, Academic Information Systems, Columbia University; and with research assistance from Deirdre von Dorum, Columbia University School of Law, class of 1997.

The HYPATIA Project: Annotated Bibliography of Online Sources

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FOOTNOTES:

[1] Hypatia was the patron of libraries; the librarians at Alexandria claimed descendence from her. Oxford Classical Dictionary 534 (1970). As an acronym, the name stands for "HTML Your Paper At This Internet Address." See IC, *infra*.

[2] Hence the acronym "HTML Your Paper At This Internet Address."

[3] The choice of forum and of state law assumes that HYPATIA will be established at Columbia University.

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For additional information about the conference, or The Andrew W. Mellon Foundation's scholarly communication initiatives, please contact Richard Ekman. For additional information about ARL or this web site contact Patricia Brennan, ARL Program Officer at (202) 296-2296.

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Last Modified: August 29, 1997